IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 275 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

REKHABEN V PATEL

Appearance:

MR BB NAIK for MR RP BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, the Income-tax Appellate Tribunal, Ahmedabad, Bench 'C' has referred the following question of law for the opinion of this Court in respect of A.Y. 1981-82 :

"Whether, in law and on facts, the assessee was entitled to depreciation on the purchase of trucks when the trucks were not registered with the Regional Transport Office till the end of the relevant accounting period ?"

2. FACTS :

The assessee had purchased certain trucks on December 1, 1980, a date falling within the accounting period relevant to A.Y. 1981-82, but got them registered in the period relevant to A.Y. 1982-83. The assessee had claimed depreciation on the said vehicles at the assessment proceedings for A.Y. 1981-82, but the said claim was rejected by the Assessing Officer on the ground that the assessee was not the registered owner of the trucks during the assessment year under consideration.

3. On appeal, C.I.T. (A) held that the assessee was entitled to depreciation on the vehicles despite the fat that they were not registered in assessee's name till the end of relevant accounting period. In appeal by the Revenue, the Tribunal has confirmed the view of C.I.T.(A) on the strength of the decision of Calcutta High Court in C.I.T. v. Salkia Transport Associates, (1983) 143 ITR 39, giving rise to the present Reference.

4. We have heard the learned counsel for the Revenue. Though served, no one appears on behalf of the respondent. In MYSORE MINERALS LTD. v. COMMISSIONER OF INCOME-TAX, (1999) 239 I.T.R. 775, the assessee was a private limited company. During the assessment year 1981-82, the assessee had purchased for the use of its staff seven low income group houses from the Housing Board. The assessee had made part payments and was in turn made allotment of the houses followed by delivery of possession by the Housing Board. The actual deed of conveyance was not yet executed by the Housing Board in favour of the assessee. The assessee made a claim under section 32 of the Act in respect of depreciation of buildings used for the purpose of the business of the assessee. The claim was rejected by the Assessing Officer. This was upheld by the Tribunal and the High Court. On appeal, while reversing the judgment of the High Court, the Supreme Court has held that the assessee was in possession of building on part payment of price

and though the building was not registered in the name of the assessee, the assessee was owner of the building for the purposes of section 32 of the Act and was entitled to depreciation on it. In view of the principle laid down in the above quoted decision, we are of the opinion that though the assessee was not registered owner of the vehicles, he was owner of the vehicles for the purposes of section 32 and was entitled to depreciation on it. Therefore, we are of the opinion that the assessee was entitled to depreciation on the purchase of trucks when the trucks were not registered with the Regional Transport Office till the relevant accounting year. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the Revenue.

The Reference accordingly stands disposed of with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah,J.)